

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 373 OF 2005

Popat Gopala Kedar
(since deceased by his heirs)
Shevantabai Popat Kedar & ors.

... Appellants/
(Ori.Def.Nos.1 & 3-6)

V/s

Bhagwat Gopala Kedar

... Respondent
(Ori.Plaintiff)

Shri G.S. Godbole for the appellants.

Shri Kishor Patil holding for P.N.Joshi for the
respondent.

CORAM: P.V. KAKADE, J.

DATED: 30TH JUNE, 2005

P.C.:

1. This appeal is preferred by the appellants against the judgment and order passed by the Addl. District Judge, Nashik dated 8.2.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Dindori dated 1.1.2000 decreeing the suit of the plaintiff holding that the document executed in 1984 is void-ab-initio and consequent revenue entries made were unlawful and it was further held that the plaintiff was entitled for his 1/2 share in the suit property and also granted other consequential reliefs.

2. I have heard the learned counsel for both parties. Perused the record including the document at Exh.87 dated 10.4.1984.

3. The plaintiff filed the suit for declaration of partition/consent deed as void and possession as per the partition and perpetual injunction against the defendants. Both the parties i.e. plaintiff and defendant No.1 are brothers of each other and had executed the document Exh.87 styled as partition/consent deed (Watap Sammati Patra), whereunder the recital is to the effect that the goods truck was previously owned jointly. The truck was priced at Rs.1,20,000/- thereby he was owner of 1/2 share of the income from the truck and, therefore, he wanted to pay Rs.60,000/- to the present appellant but since he had no money, he decided to hand over his entire 1/2 property of the suit land to the respondent and accordingly transferred that share in the immovable properties described in the deed in favour of the respondent. Therefore, it is obvious that the basis for the suit was the said document which was titled as partition-cum-consent deed.

4. The learned Trial Judge, on the basis of available

evidence on record, came to the conclusion that the execution of the document was an admitted position and the impugned document was void-ab-initio and consequently the relief claimed in the plaint came to be granted.

The appeal was carried to the District Court, Nasik. The learned lower appellate Court Judge, after hearing both parties, came to the conclusion that the findings recorded by the Court below were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

5. The only substantial question of law sought to be raised at this stage is regarding admissibility of the document Exh.87 executed between the parties dated 10.4.1984. Both the Courts below have come to the conclusion that it was the document of conveyance of immovable property and, therefore, it should be registered under the Indian Registration Act and, as such, the document was not admissible in evidence and hence consequent reliefs were not granted. The learned counsel for the appellants submitted that the document could be read as family arrangement between the parties and, therefore, it need not require registration under

the Indian Registration Act. However, it is to be noted that, it is an admitted position that there were previous partitions between the brothers in the life time of their father. Therefore, in the circumstances, it cannot be said that the impugned document Exh.87 was intended to be a family arrangement between the parties.

It was further urged that the evidence on record coupled with the contents of the document were sufficient to show that the appellants were entitled for protection under the provisions of Sec.53-A of the Transfer of Properties Act. However, taking into account the relevant aspects of the evidence as discussed by the learned lower appellate Court Judge, I do not find merit in this argument and hence it cannot be considered in law.

6. In this regard reference must be made to the ruling of the Supreme Court in the case of **Kondiba Gadadu Kadam v/s Savitribai Sopan Gujar & ors., reported in (1999) 3 SCC 722**, wherein the Apex Court has observed that the concurrent findings of facts whosoever erroneous cannot be disturbed by the High Court in exercise of powers under Sec. 100 of the C.P.C. The substantial question of law has to be distinguished from substantial question

of fact. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. It is seen that both the Courts below have properly appreciated the evidence on record taking into consideration all the submissions advanced today before this Court and, therefore, I do not propose to interfere in the findings recorded by the lower appellate Court.

7. In the result, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 642 of 2005 also stands dismissed.

8. At this stage, the learned counsel for the appellants submits that the interim relief granted earlier be continued for further period. In view of the facts and circumstances, the interim relief granted earlier stands continued for a period of six weeks.

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